11-1800-10086-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate Appeal of Lakeside Medical Center, Inc.	RECOMMENDED ORDER GRANTING CROSS-MOTIONS FOR SUMMARY DISPOSITION IN PART

The above-captioned matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Hearing and Prehearing Conference issued by the Deputy Commissioner of the Minnesota Department of Human Services on October 6, 1995, and the parties' cross-motions for summary disposition. The parties have agreed to a Stipulation of Facts, which was filed with the Administrative Law Judge on April 22, 1996. Briefs regarding the cross-motions were filed and oral argument was heard on July 26, 1996. The record with respect to the motions closed at the conclusion of the oral argument.

Catherine Margaret Meek, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Human Services ("the Department"). Thomas B. Hatch, Attorney at Law, Robins, Kaplan, Miller & Ciresi, 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2015, and James W. Ingison, Attorney at Law, 505 North Highway 169, Suite 500, Minneapolis, Minnesota 55441, appeared on behalf of Lakeside Medical Center, Inc. ("Lakeside" or "the Provider").

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Provider's Motion for Summary Disposition be GRANTED with respect to the property-related payment rate issue and DENIED with respect to the sick leave accrual issue, and that the Department's Motion for Summary Disposition be GRANTED with respect to the sick leave accrual issue and DENIED with respect to the property-related payment rate issue.

Dated this 26th day of August, 1996.

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BARBARA L. NEILSON
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact John Petraborg, Acting Commissioner, Minnesota Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Lakeside Medical Center, Inc., operates a nursing home in Pine City, Minnesota, and receives reimbursement from the Department for allowable costs incurred in providing care to residents under the federal Medicaid Act, 42 U.S.C. § 1396a, and the State's Medical Assistance Program, Minn. Stat. Ch. 256B. The reimbursement rates at issue in this proceeding were set under Minn. Stat. § 256B.431 and Minn. Rules 9549.0010 through 9549.0080 ("Rule 50"). To receive medical assistance payments, nursing homes submit annual cost reports showing costs incurred during the reporting year, which generally runs from October 1 through the following September 30. Minn. R. 9549.0041, subp. 1. During desk audits, DHS auditors review the cost reports and supporting documentation. Minn. R. 9549.0020, subp. 19 and 9549.0041. The auditors allow, disallow, or reclassify costs reported on the provider's cost report and, based upon adjusted allowable costs, calculate a prospective per diem rate for a rate year running from July 1 through the following June 30. Minn. R. 9549.0041, subp. 11, 13. Providers may appeal specific audit adjustments after they receive the final rate notice. Minn. Stat. § 256B.50, subd. 1b. If the appeal is not resolved informally, the provider may demand a contested case hearing. Minn. Stat. § 256B.50, subd. 1h. In this case, the Provider has appealed the desk audit payment rates established by the Department for rate periods beginning July 1, 1990, and July 1, 1994 (based upon cost reports for fiscal periods ending September 30, 1989, and September 30, 1993). See Notice of and Order for Hearing and attachments thereto.

Both the Department and Lakeside have filed motions for summary disposition in this matter. Summary disposition is the administrative equivalent of summary judgment. Minn. Rules pt. 1400.5500(K). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Louwagie v. Witco Chemical Corp., 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03. In considering motions for summary disposition, the Office of Administrative Hearings has

generally followed the summary judgment standards developed in judicial courts. See Minn. Rules pt. 1400.6600.

It is well established that, in order to successfully resist a motion for summary judgment, the nonmoving party must show that specific facts are in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05. Id.; Murphy v. Country House, Inc., 307 Minn. 344, 351-52, 240 N.W. 2d 507, 512 (1976); Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1988). Summary judgment may be entered against the party who has the burden of proof at the hearing if that party fails to make a sufficient showing of the existence of an essential element of its case after adequate time to complete discovery. Id. To meet this burden, the party must offer "significant probative evidence" tending to support its claims. A mere showing that there is some "metaphysical doubt" as to material facts does not meet this burden. Id.

Based upon the memoranda and affidavits filed by the parties, there appear to be no relevant facts in dispute regarding the sick leave accrual and property-related payment rate issues. The disagreement between the parties turns on the legal issues of what calculation is proper for the property-related rate and what treatment should be given to the Provider's elimination of its policy that sick leave must be paid to terminating employees. These issues are discussed below.

Property-Related Payment Rate

Rule 50 provides a methodology for determining a nursing home's total payment rate. The total payment rate is comprised, in part, of a property-related payment rate. The property-related payment rate is, in turn, comprised of a "building capital allowance" or "rental rate" and an "equipment allowance." See Minn. R. 9549.0020, subp. 44; 9549.0060, subp. 13; 9549.0070. The approach taken under Rule 50 regarding the calculation of the property-related rate differs from that of its predecessor, Rule 49. Under Rule 49, which was codified in Minn. R. 9510.0010-.0480, a nursing home's property-related rate was based upon annual property costs which included actual interest expense on debt incurred for purchase of a nursing home facility and depreciation expense based upon the historical cost of capital assets. Minn. R. 9510.0440, subps. 1 and 6; 9510.0350. After the adoption of Rule 50, the property-related payment rate was no longer based on costs but instead was based on the value of the facility. As originally promulgated, Rule 50 provided for a five-year phase-in period to be completed by July 1, 1990, during which all nursing homes would gradually make the transition from a "historical property-related per diem" based upon their prior property costs under Rule 49 (historical cost depreciation and interest) to the new Rule 50 "rental rate" approach based upon allowable appraised value (replacement cost new minus appraised depreciation). Minn. R. 9549.0060, subp. 13.H ; see also Minn. Stat. § 256B.431, subd. 3A(b)(11) (1994).

During the spring of 1990, the Legislature enacted a statute requiring an additional year of modified phase-in. Minn. Stat. § 256B.431, subd. 3i (1994). The statute divided all

nursing homes into three groups: Group A facilities consisted of nursing homes that had received full rental reimbursement for the rate year beginning July 1, 1989, pursuant to Minn. R. 9549.0060, subp. 13; Group B facilities consisted of nursing homes that had received more than full rental reimbursement for the rate year beginning July 1, 1989, and were phasing down to full rental reimbursement pursuant to Minn. R. 9549.0060, subp. 13.B; and Group C facilities consisted of nursing homes that had received less than full rental reimbursement pursuant to Minn. R. 9549.0060, subp. 13.C or D, and thus were phasing up to full rental reimbursement. Id.

The Department conducted desk audits of the cost reports submitted by Lakeside for the reporting years ending September 30, 1988, and September 30, 1989, and established Rule 50 payment rates for the rate years beginning July 1, 1989, and July 1, 1990, based on those cost reports. Stipulation of Facts, ¶ 3. As a result of the desk audits, the Department determined that Lakeside's property-related payment rate was $6.41 for the rate year beginning July 1, 1989, and $6.51[1] for the rate year beginning July 1, 1990. Id., ¶¶ 4-5. It is the Department's determination with respect to the rate year beginning July 1, 1990, that is at issue in this portion of the Provider's appeal. The Department classified Lakeside under Minn. Stat. § 256B.431, subd. 3i (1994) as a "Group B" nursing facility ("phase down to rental") for the rate year beginning July 1, 1990, and calculated its property-related payment rate for the rate year beginning July 1, 1990, pursuant to Minn. Stat. § 256B.431, subd. 3i(d) (1994). Id., ¶ 6. As of July 1, 1989, Lakeside's rental per diem rate was $6.25.[2]

During the reporting year ending September 30, 1989, Lakeside delicensed eight nursing home beds, thereby reducing the number of beds from 125 to 117. The reduction in nursing home capacity days was the primary reason that there was an increase to $7.11 in the rental per diem for the rate year beginning July 1, 1990. Id., ¶ 7. The Provider asserted that the appropriate property-related payment rate for the rate year beginning July 1, 1990, should be the rental per diem of $7.11 rather than $6.51, as determined by the Department, and filed a timely appeal of the desk audit determination. Id., ¶ 9. The Department determined that its calculation was correct, and Lakeside filed a timely request for a contested case hearing regarding the issue. Id., ¶ 10-11.

Both parties have stipulated that the facts set forth above are correct. In addition, both parties agree that the controlling statute is Minn. Stat. 256B.431, subd. 3i. However, the parties disagree regarding the proper application of the statute to the facts presented in this case. The statute reads, in pertinent part, as follows:

> (b) Nursing facilities shall be grouped according to the type of property-related payment rate the commissioner determined for the rate year beginning July 1, 1989. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part 9549.0060, subpart 13, item A (full rental reimbursement), shall be considered group A. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part 9549.0060, subpart 13, item B (phase-down to full reimbursement), shall be considered group B. A nursing facility whose property-related payment rate was determined under Minnesota Rules, part

9549.0060, subpart 13, item C or D (phase-up to full reimbursement), shall be considered group C.

(c) For the rate year beginning July 1, 1990, a group A nursing facility shall receive its property-related payment rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section.

(d) For the rate year beginning July 1, 1990, a group B nursing facility shall receive the greater of 87 percent of the property-related payment rate in effect on July 1, 1989; or the rental per diem rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section in effect on July 1, 1990; or the sum of 100 percent of the nursing facility's allowable principle and interest expense, plus its equipment allowance multiplied by the resident days for the reporting year ending September 30, 1989, divided by the nursing facility's capacity days as determined under Minnesota Rules, part 9549.0060, subpart 11, as modified by subdivision 3f, paragraph (c); except that the nursing facility's property-related payment rate must not exceed its property-related payment rate in effect on July 1, 1989.

(e) For the rate year beginning July 1, 1990, a group C nursing facility shall receive its property-related payment rate determined under Minnesota Rules, parts 9549.0010 to 9549.0080, and this section, except the rate must not exceed the lesser of its the property-related payment rate determined for the rate year beginning July 1, 1989; multiplied by 116 percent or its rental per diem rate determined effective July 1, 1990.

Minn. Stat. § 256B.431, subd. 3i.

The parties' argument centers on the application of the qualifying phrase that appears at the end of item (d) (i.e., the phrase "except that the nursing facility's property-related payment rate must not exceed its property-related payment rate in effect on July 1, 1989"). The qualifying phrase limits the amount of the property-related payment rate for group B nursing homes for the rate year beginning July 1, 1990, to the property-related payment rate paid to the nursing home as of July 1, 1989. In essence, the Department contends that the qualifying phrase included in subdivision 3i(d) of the statute applies to all three calculations set forth in subdivision 3i(d). The Department argues that the fact that a semicolon was used to separate the last calculation from the qualifying phrase supports its view that the qualifying phrase applies to all three calculations. In contrast, Lakeside asserts that the qualifying phrase applies only to the third calculation set forth in subdivision 3i(d), arguing that such an interpretation is in accordance with rules of statutory construction and a logical reading of the statute.

The qualifying phrase included in item (d) is substantially the same as a proviso. In Dahlberg v. Young, 231 Minn. 60, 66-67, 42 N.W.2d 570, 575 (Minn. 1950), the Minnesota Supreme Court relied upon the following general rule of statutory construction with respect to provisos:

> "The natural and appropriate office of a proviso is to modify the operation of that part of the statute *immediately preceding the proviso, or to restrain or qualify the generality of the language that it follows*. Indeed, the presumption is that a proviso in a statute refers only to the provision to which it is attached, and, as a general rule, a proviso is deemed to apply only to the immediately preceding clause or provision. *It should be confined to what precedes, unless it is clear that it was intended to apply to subsequent matter*." (Italics supplied.) 50 Am. Jur., Statutes, § 438.

Pursuant to the rule of statutory construction set forth in Dahlberg, the applicability of the qualifying phrase in item (d) should be limited to the clause immediately preceding it (i.e., the third calculation), unless it is clear that the qualifying phrase was intended to apply to the first and second calculations as well. The first calculation described in subdivision 3i(d) limits the July 1, 1990, property-related payment rate to 87 percent of the July 1, 1989, rate. This amount will always be below the July 1, 1989, rate that was in effect for the nursing home. The qualifying phrase in item (d) would be unnecessary if applied to the first calculation. It also would not be necessary or logical to apply the qualifying phrase to the second calculation since, by definition, a Group B or "phasing down" nursing home would not have a rental per diem rate on July 1, 1990, which exceeded the property-related payment rate in effect on July 1, 1989. The third calculation (the sum of 100 percent of the nursing home's allowable principle and interest expense plus its equipment allowance, multiplied by the resident days for the reporting year ending September 30, 1989, and divided by the nursing home's capacity days) is a modified historical rate calculation with a number of variables which could result in a property-related payment rate higher than that paid to a nursing home in 1989. The qualifying phrase clearly applies only to the third calculation set forth in item (d).

The Court in Dahlberg also noted that the "application of a statute is to be determined in the light of the statutory purpose as a whole." 42 N.W.2d at 574. In the present case, Minn. Stat. § 256B.431, subd. 3i, was designed to bring all groups of nursing homes to the rental rate when calculating the property-related payment rate. Minn. Stat. § 256B.431, subd. 3a(b)(11) requires the Department to consider in developing rules "factors designed to . . . phase-in implementation of the rental reimbursement method." Minn. Stat. § 256.431, subd. 3i(b) classifies nursing homes by their direction away from the rental reimbursement rate. Group B nursing homes are identified as "phase-down to full rental reimbursement." Id., subd. 3i(b). There is no indication that the Legislature intended to reduce any nursing home property-payment rate below full rental reimbursement. Indeed, the Department agreed during oral argument that the Legislature intended in enacting Minn. Stat. § 256B.431, subd. 3i, to move all nursing homes toward the full rental reimbursement method. The statutory scheme divides nursing homes into three groups: those at the rental rate, those above the rental rate, and those below the rental rate. Those below the rental rate are to receive the lesser of 116 percent of the historical rate or the rental rate. Minn. Stat. § 256B.431, subd. 3i(e). Those at the rental rate are to receive the rental rate. Id., subd. 3i(c). Those above the rental rate are to receive the greater of the three calculations set forth in subd. 3i(d). The statute expressly authorizes payment at less than the rental rate only for nursing homes whose rental rate would exceed 116 percent of their historical rate. The approach urged by the Department

in this case is contrary to the legislative objective to generally move all nursing homes toward the full rental reimbursement rate. This fact provides further support for the statutory interpretation urged by Lakeside.

Based on the above analysis, the Administrative Law Judge has concluded that only the third calculation set forth in Minn. Stat. § 256B.431, subd. 3i(d), is limited by the qualifying phrase that appears at the end of item (d). In accordance with this interpretation, Lakeside, a group B nursing home, is entitled to the greater of 87% of the 1989 property-related payment rate, the rental per diem rate calculated for July 1, 1990, or the modified historical rate. The greater of those three calculations for Lakeside is $7.11, which is the rental rate calculated for July 1, 1990. That is the appropriate rate to be set for the Provider's property-related payment rate for 1990. Lakeside is entitled to summary disposition on this issue.

Sick Leave Accrual

The total payment rate under Rule 50 is comprised, in part, of the nursing home's operating cost payment rate. Minn. R. 9549.0020, subp. 44; 9549.0070. The operating cost payment rate is calculated based on costs incurred by nursing homes for employees, including sick leave benefits.

Lakeside reported the cost of accrued sick leave pay in its cost reports for the reporting years ending September 30, 1983, through September 30, 1992. For each of these reporting years, the Department conducted desk audits of the costs. In some periods, the sick leave accruals were disallowed; in other periods, the reported accruals were allowed and the accrued sick leave pay was taken into consideration in the determination of payment rates under Temporary Rule 50 and Rule 50. Stipulation of Facts, ¶ 12. The amounts of the reported and allowed accruals are set forth in Paragraph 12 of the parties' Stipulation of Facts.

Lakeside's financial statements for the year ending September 30, 1992, showed an accrued sick leave pay liability in the amount of $133,654.00. During the reporting year ending September 30, 1993, Lakeside changed its policy and eliminated its obligation to pay accrued sick leave to employees upon the termination of their employment. Stip. of Facts, ¶ 14. Lakeside modified its financial statements as a result of its change in sick leave policy. Specifically, it removed the accrued liability from its balance sheet and showed non-operating revenue of $133,654.00 on its income statement. Id. Lakeside indicated during oral argument that this change was made in order to make its books "look better" when it sought bank financing.

When it determined the desk audit payment rates for Lakeside effective July 1, 1994, the Department recognized income to Lakeside in the amount of $133,654.00. A portion of this amount ($2,125.00) was allocated to the attached hospital beds through Medicare step-down procedures. The remaining income of $131,529.00 was offset against the reported costs of the nursing home. Id., ¶ 15. After Lakeside received the 1994 rate year final desk audit notice on May 23, 1994, it filed a timely appeal. Id., ¶ 16. The Department issued a determination regarding the appeal on April 7, 1995, in

which it decided that the amount of the $131,529.00 offset should be decreased by $27,825.00. Id., ¶ 17. On May 1, 1995, Lakeside filed a timely request for a contested case hearing on this issue. Id., ¶ 18.

The Department determined that Lakeside's total payment rate for the rate year beginning July 1, 1994, should be adjusted by the amount of $105,829.00 because that amount constituted an "applicable credit" pursuant to Minn. R. 9549.0020, subp. 4, and 9549.0035, subp. 2. An "applicable credit" is defined as "a receipt or expense reduction as a result of a purchase discount, rebate, refund, allowance, public grant, beauty shop income, guest meals income, adjustment for overcharges, insurance claims settlement, recovered bad debts, or any other adjustment or income reducing the cost claimed by a nursing home." Minn. R. 9549.0020, subp. 4. By virtue of the change in its policy regarding the payment of sick leave, Lakeside eliminated its obligation to pay accrued sick leave benefits to its employees and, in the Department's view, thereby experienced an "expense reduction" constituting an "applicable credit" under the rules. During the ten-year time period at issue in this case, the Department asserts that it reimbursed Lakeside for all of the sick leave benefits Lakeside actually paid to its employees, which were reported as salary costs by Lakeside and recognized as allowable costs. The Department recognized $105,829.00 of the reported $133,654.00 accrued sick leave liability as allowable costs during the ten-year period and reimbursed Lakeside in that amount. Because the Department previously recognized $105,829.00 of the Provider's total reported accrued sick leave liability, the Department contends that it properly offset Lakeside's reported costs for the reporting year ending September 30, 1993, by $105,829.00.

Lakeside argues that the Department's treatment is improper. Lakeside emphasizes that it did not receive any cash or reduce any cash expenditures when it recognized $133,654.00 in revenue in 1993, but merely made a general journal entry in its bookkeeping system, recording a debit of $133,654.00 to the accrued sick leave liability account and a credit to the income statement in the same amount. The Provider also asserts that the write-off in 1993 is an applicable credit pursuant to Minn. R. 9549.0020, subp. 4, only if the amounts accrued in prior years and reimbursed by the State have not yet been paid by Lakeside. Although Lakeside no longer has records that would provide a detailed breakdown of the $133,654.00 accrual in light of the amount of sick pay paid out over the ten-year period from 1983 to 1992, Lakeside contends that the $64,293.00 in sick pay accrued in 1983 has already been paid out to Lakeside's employees. Lakeside argues that the amount of $64,293.00 is not properly deemed an "applicable credit" because it did not relieve Lakeside of the obligation to pay the $64,293.00 in 1983 and did not reduce the cost of paying that amount to its employees. Lakeside acknowledges that it reported and was allowed a total of $41,536.00 in accrued sick leave during the period of 1988 to 1992, and concedes that the write-off in 1993 may be an "applicable credit" to the extent of the $41,536.00 in accrued sick pay allowed from 1988 to 1992.[3] Lakeside thus contends that the appropriate adjustment to be made by the Department is $41,536.00.

The Administrative Law Judge does not find Lakeside's arguments to be persuasive. In this case, the Provider created an obligation for future payment of sick leave benefits to employees and sought reimbursement from the Department, and the Department in fact reimbursed the Provider for $105,829.00. When the Provider

eliminated its fixed obligation to pay, as it did by virtue of the change in its policy, the Provider eliminated an expense previously claimed as a cost and the amount previously reimbursed constitutes an applicable credit under Rule 50. The Department reimbursed Lakeside for $105,829.00 on the assumption that the Provider would pay that amount out in the future. Lakeside reported on its Rule 50 cost reports sick leave accruals equal to the net difference between the balance of the accrued sick leave liability at the beginning of the reporting year and the balance at the end of the reporting year. The amount reported each year took into consideration both reductions in the previous reporting year's liability due to sick leave actually paid out and increases in liability stemming from new sick leave benefits earned during the reporting year. If a positive value was reported by Lakeside, the Department reimbursed Lakeside for the net growth in its total accrued sick leave liability balance (if the reported accrual was deemed allowable). If a negative value was reported, the Department reduced or offset Lakeside's allowable costs by the amount of the change in liability (if the Department allowed the reported accrual). The Department apparently also reimbursed Lakeside for all sick leave that was actually paid out during each reporting year.[4]

As permitted by Temporary Rule 50, Lakeside reported the initial accrued sick leave liability of $64,293.00 in the reporting year ending September 30, 1983. Thereafter, the Provider reported accrued sick leave liability in the amount of the net change in the total balance it owed to its employees for the reporting years ending September 30, 1984, through September 30, 1987. The Department disallowed Lakeside's reported sick leave accruals in the total amount of $27,825.00 for the reporting years ending September 30, 1984, through September 30, 1987. The Department (erroneously) allowed sick leave accruals reported by Lakeside in the total amount of $41,536.00 for the reporting years ending September 30, 1988, through September 30, 1992. Accordingly, Lakeside was reimbursed by the Department for $105,829.00 of the total $133,654.00 accrued sick leave liability it reported during this ten-year period. The amount of $105,829.00 includes both the $64,293.00 accrued sick leave liability as of September 30, 1983, and the $41,536.00 in additional accruals allowed during the reporting years ending September 30, 1988, through September 30, 1992.

Lakeside's contention that the $133,654.00 it wrote off did not include the original $64,293.00 accrued in 1983 does not make sense in light of the actual amount of the accruals reported by Lakeside each year. Lakeside's reported liability grew from $64,293.00 in 1983 to $133,654.00 in 1992. Even if Lakeside in fact paid more than $64,293.00 in sick pay in a single year or over a number of years, the fact remains that the overall liability grew to $133,654.00. Therefore, the $64,293.00 must be viewed as part of Lakeside's total accrued liability of $133,654.00. The Judge rejects Lakeside's argument that the offset should be limited to $41,536 and finds no basis in light of the net accruals reported by Lakeside each year for concluding that the $133,654.00 was comprised solely of the sick pay earned by Lakeside employees during the reporting years ending September 30, 1989, through September 30, 1992. The result urged by Lakeside would create a windfall for the Provider and reimburse it for expenses that it did not incur and that no longer exist.

There is no genuine issue of material fact remaining for hearing on this issue, and the Department is entitled to summary disposition. The Department is entitled to offset the amount of $103,704.[5] against the reported costs of the nursing home for the rate year beginning July 1, 1994.

B.L.N.

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[1] The Department determined that Lakeside's property-related payment rate was $6.51 based upon Lakeside's property-related payment rate for the rate year beginning July 1, 1989 ($6.41) adjusted by a statutory equipment allowance increase of $ .10. Stipulation of Facts, ¶¶ 4, 5.

[2] In its memorandum in support of its motion, Lakeside initially contended that its rental reimbursement rate effective July 1, 1989, was $6.17 in contrast to the figure of $6.25 urged by the Department. Lakeside's Memorandum at 4, n.1. When the parties later filed a Stipulation of Facts in this matter, however, they agreed that, "[a]s of July 1, 1989, Lakeside's rental per diem rate was $6.25." Stipulation of Facts, ¶ 7. Therefore, it appears that the parties are In agreement with respect to the $6.25 figure. In any case, since the parties both agree that the rental per diem as of July 1, 1989, was less than the cost-based, property-related payment rate as of July 1, 1989, any remaining disagreement between them is not material.

[3] Lakeside also agreed to the disallowance of the $41,536.00 claimed in the years 1988 to 1992 because the accrued sick pay claimed in those years was not "fully vested" within the meaning of Rule 50 and thus the amounts claimed were not "allowable costs." Lakeside Memorandum at 13-14.

[4] The Department asserts that these amounts were reported by Lakeside as salary costs and recognized by the Department as allowable costs. See 12 MCAR § 2.05003.E; Minn. R. 9549.0035, subp. 4 (1995). While cost reports are no longer available for many of these years, it is logical to presume that the Department's assertion is correct. Although Lakeside pointed out that the Department made these assertions without supporting evidence, Lakeside did not provide an affidavit from its accountant to support a contrary view or otherwise provide evidence tending to refute the assertion. Lakeside bears the burden of proving by a preponderance of the evidence that the Department's determinations are incorrect. Minn. Stat. § 256B.50, subd. 1c (1994).

[5] Lakeside asserts that the Department made an arithmetic error in calculating the amount of the reduction and indicated that the amount should be $25,703.00 since $131,529.00 - $105,829.00 = $25,703.00. The Department has indicated, however, that it has agreed to reduce the amount treated as an applicable credit by $27,825.00 because the Department had disallowed Lakeside's reported sick leave accruals in the total amount of $27,825.00 for the reporting years ending September 30, 1984, through September 30, 1987, based on its determination that the accruals were not "vested" and thus did not qualify as "allowable costs" under Rule 50. The total amount of the offset found by the Department thus is $103,704.00 ($131,529.00 - $27,825.00 = $103,704.00). The Administrative Law Judge assumes that the Department's calculation will be acceptable to the Lakeside since it results in a more favorable outcome for the Provider.